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171349Z Nov 05

UNCLAS PARIS 007814

SIPDIS

PASS SEC FOR SBOONE
PASS FEDERAL RESERVE
STATE FOR EB AND EUR/WE
TREASURY FOR DO/IM MSOBEL AND LHULL
TREASURY ALSO FOR DO/IMB AND DO/E WDINKELACKER
LABOR FOR ILAB
USDOC FOR 4212/MAC/EUR/OEURA

E.O. 12958: N/A

TAGS: EFIN ECON PGOV FR
SUBJECT: CNIL UNLOCKS SOX

¶11. SUMMARY: Bowing to pressure, CNIL Commissioners announced on November 15 that they would allow US-listed companies to enact whistleblower provisions in France, as required by Sarbanes Oxley Section 301. CNIL published an "orientation document" and promised to grant blanket approval to firms that self-certify compliance. CNIL plans to take the document to the EC WP 29, in the hopes of reaching a common EU position. END SUMMARY.

BACKGROUND

¶12. The French National Commission on Information and Liberty (CNIL), a French agency set up to guard civil liberties, has effectively reversed its decision of May 2005 that prevented firms in France from complying with Sarbanes Oxley (SOX) Section 301. That section requires audit committees of publicly traded companies to establish procedures for confidential, anonymous submission by employees of concerns regarding questionable accounting or auditing matters (e.g., whistleblower systems, also known as ethical hotlines).

SOLUTION

¶13. CNIL published an orientation document on November 15 on its website, www.cnil.fr, in which it permits companies to set up whistle-blowing systems under certain conditions. Each system should be set up to respond to specific obligations, e.g., to report financial or accounting irregularities, or corruption. Anonymous reports are permissible, but should not be encouraged. Companies should maintain the confidentiality of data. Companies should inform anyone implicated as soon as practicable to ensure rights of opposition, access to the facts (but not the identity of the source), and correction of facts.

¶14. The CNIL stated its next step would be to adopt a decision approving in advance those systems that conform to the conditions spelled out in its orientation document. Companies will thereafter be able to self-certify compliance by a simple letter to the CNIL, avoiding the need for the CNIL to examine each company's policy on a case-by-case basis.

¶15. The CNIL may issue a further note to explain the practical steps companies will need to take, and will issue an authoritative English translation of its orientation document as soon as possible. CNIL will present its work at the next meeting of the European Commission Article 29 Working Group on November 24-25, as the basis for adopting a common position to the data privacy issues presented by whistleblower systems.

¶16. COMMENT: We have heard that associations, lawyers, and others representing about 300 firms, both French and multinational, had contacted CNIL to express concerns about its prior opposition to ethical hotlines. At the Embassy, we organized several meetings with representatives of major and smaller US companies to devise strategic solutions and improve on the CNIL draft text. We also actively engaged government officials, CNIL staff and CNIL Commissioners to advocate for SOX implementation. Although local firms tended to acknowledge that whistle-blowing was alien to French culture, and government officials are wary of extraterritoriality, there is general recognition that current trends in corporate governance point to the need to accept stronger financial safeguards.

STAPLETON#